



(BILLING CODE: 3510-DS-P)

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-979, C-570-980]

#### **Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders, in Part**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is revoking, in part, the antidumping duty (AD) and countervailing duty (CVD) orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China (China) (*Orders*) with respect to certain off-grid solar panels based on a lack of interest in the relief provided by the *Orders* with respect to those products.

**DATES:** Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Eli Lovely, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1593.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 7, 2012, Commerce published AD and CVD orders on certain crystalline silicon photovoltaic cells, whether or not assembled into modules, from China.<sup>1</sup> On April 17, 2018, Goal Zero, LLC (Goal Zero), an importer of the subject merchandise, requested changed circumstances reviews (CCRs) and revocation, in part, of the *Orders*, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b), with respect to certain off-grid solar panels.<sup>2</sup>

On July 20, 2018, Commerce published the *Initiation Notice* for the requested CCRs in the *Federal Register*.<sup>3</sup> On August 20, 2018, Commerce published the preliminary results of these CCRs, in which it found that producers accounting for substantially all of the production of the domestic like product to which the *Orders* pertain lack interest in the relief afforded by the *Orders* with respect to certain off-grid solar panels.<sup>4</sup>

On September 4, 2018, Goal Zero and the petitioner<sup>5</sup> requested that partial revocation of the *Orders* be applied retroactively starting January 1, 2015 for purposes of the *CVD Order*, and December 1, 2015 for purposes of the *AD Order*.<sup>6</sup>

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<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012) (*AD Order*) and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (*CVD Order*) (collectively, *Orders*).

<sup>2</sup> See Goal Zero's Letter, "Goal Zero LLC's Request for a Changed Circumstances Review," (Goal Zero's Request) dated April 17, 2018.

<sup>3</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part*, 83 FR 34542 (July 20, 2018) (*Initiation Notice*).

<sup>4</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders, in Part*, 83 FR 42112, dated August 20, 2018.

<sup>5</sup> The petitioner is SolarWorld Americas, Inc.

<sup>6</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*; Goal Zero LLC's Comments on the Preliminary Results of the Changed Circumstances Review, dated September 4, 2018; see also SolarWorld's submission: "Crystalline Silicon Photovoltaic Cells, Whether or Not

## Final Results of Changed Circumstances Reviews, and Revocation of the *Orders*, In Part

Because no party submitted comments opposing the preliminary results of these CCRs, and the record contains no other information or evidence that calls into question the preliminary results, Commerce determines, pursuant to sections 751(d)(1) and 782(h) of the Act, and 19 CFR 351.222(g), that there are changed circumstances that warrant revocation of the *Orders*, in part. Specifically, because the producers accounting for substantially all of the production of the domestic like product to which the *Orders* pertain lack interest in the relief provided by the *Orders* with respect to certain off-grid solar panels as described below, we are revoking the *Orders*, in part, with respect to the following:

1) Off grid CSPV panels in rigid form with a glass cover, with the following characteristics:

- (A) a total power output of 100 watts or less per panel;
- (B) a maximum surface area of 8,000 cm<sup>2</sup> per panel;
- (C) do not include a built-in inverter;
- (D) must include a permanently connected wire that terminates in either an 8mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors;
- (E) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and
- (F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

2) Off grid CSPV panels without a glass cover, with the following characteristics:

- (A) a total power output of 100 watts or less per panel;
- (B) a maximum surface area of 8,000 cm<sup>2</sup> per panel;

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Assembled into Modules, from the People's Republic of China: Comments on Preliminary Results of the Goal Zero LLC Changed Circumstances Reviews,” dated September 4, 2018.

(C) do not include a built-in inverter;

(D) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and

(E) each panel is

1. permanently integrated into a consumer good;
2. encased in a laminated material without stitching, or
3. has all of the following characteristics: (i) the panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB-A connector.<sup>7</sup>

The scope description below includes this exclusion language.

Scope of the Antidumping and Countervailing Duty Orders on Certain Crystalline Silicon Photovoltaic Cells from the People's Republic of China

The merchandise covered by the *Orders* is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

The *Orders* cover crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to,

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<sup>7</sup> See Goal Zero's Letter, "Goal Zero LLC's Comments Regarding the Proposed Scope of the Changed Circumstances Reviews," dated July 9, 2018 at 10-11.

modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of the *Orders*.

Excluded from the scope of the *Orders* are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of the *Orders* are crystalline silicon photovoltaic cells, not exceeding 10,000mm<sup>2</sup> in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Additionally, excluded from the scope of the *Orders* are panels with surface area from 3,450 mm<sup>2</sup> to 33,782 mm<sup>2</sup> with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Also excluded from the scope of the *Orders* are:

1) Off grid CSPV panels in rigid form with a glass cover, with the following characteristics:

(A) a total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm<sup>2</sup> per panel;

(C) do not include a built-in inverter;

(D) must include a permanently connected wire that terminates in either an 8mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors;

(E) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and

(F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

2) Off grid CSPV panels without a glass cover, with the following characteristics:

(A) a total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm<sup>2</sup> per panel;

(C) do not include a built-in inverter;

(D) must include visible parallel grid collector metallic wire lines every 1-4 millimeters across each solar cell; and

(E) each panel is

1. permanently integrated into a consumer good;

2. encased in a laminated material without stitching, or

3. has all of the following characteristics: (i) the panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB-A connector.<sup>8</sup>

Modules, laminates, and panels produced in a third-country from cells produced in the PRC are covered by the *Orders*; however, modules, laminates, and panels produced in the PRC from cells produced in a third-country are not covered by the *Orders*.

Merchandise covered by the *Orders* is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for

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<sup>8</sup> See Goal Zero's Letter, "Goal Zero LLC's Comments Regarding the Proposed Scope of the Changed Circumstances Reviews," dated July 9, 2018 at 10-11.

convenience and customs purposes; the written description of the scope of the *Orders* is dispositive.<sup>9</sup>

#### Application of the Final Results of These Reviews

Goal Zero and the petitioner have requested retroactive application of the final results of these reviews starting January 1, 2015 for purposes of the *CVD Order*, and December 1, 2015 for purposes of the *AD Order*.<sup>10</sup> Section 751(d)(3) of the Act provides that “[a] determination under this section to revoke an order ... shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.” Consistently, Commerce’s general practice is to instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping and countervailing duties, and to refund any estimated antidumping and countervailing duties, on all unliquidated entries of the merchandise covered by a revocation that are not covered by the final results of an administrative review or automatic liquidation.<sup>11</sup>

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<sup>9</sup> See *AD Order*, 77 FR at 73018-73019; *CVD Order*, 77 FR at 73017 (footnote omitted); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of Antidumping and Countervailing Duty Orders, in Part*, 83 FR 2618 (excluding certain panels with surface area from 3,450 mm<sup>2</sup> to 33,782 mm<sup>2</sup>).

<sup>10</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China*; Goal Zero LLC’s Comments on the Preliminary Results of the Changed Circumstances Review, dated September 4, 2018 (Goal Zero Comments); see also SolarWorld’s submission: “Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Comments on Preliminary Results of the Goal Zero LLC Changed Circumstances Reviews,” dated September 4, 2018.

<sup>11</sup> See e.g., *Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part*, 76 FR 27634 (May 12, 2011); *Stainless Steel Bar From the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order, in Part*, 72 FR 65706 (November 23, 2007); *Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, 71 FR 66163 (November 13, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Canada and Germany*, 71 FR 14498 (March 22, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People’s Republic of China*, 68 FR 62428 (November 4, 2003).

Commerce has exercised its discretion and deviated from this general practice if the particular facts of a case have implications for the effective date of the partial revocation selected by Commerce.<sup>12</sup> Specifically, when selecting the effective date for partial revocation, Commerce has considered factors such as the effective date proposed by the petitioner (and/or the effective date agreed to by all parties),<sup>13</sup> the existence of unliquidated entries dating back to the requested effective date,<sup>14</sup> whether an interested party requested the effective date of the revocation,<sup>15</sup> and whether the requested effective date creates potential administrability issues (e.g., the products covered by the partial revocation are in the sales database used in the dumping margin calculations for a completed administrative review with a period of review (POR) that overlaps with the date requested).<sup>16</sup>

On September 4, 2018, Goal Zero requested retroactive application of the final results of these reviews starting January 1, 2015 for purposes of the *CVD Order*, and December 1, 2015 for

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<sup>12</sup> See section 751(d)(3) of the Act; *Itochu Building Products v. United States*, Court No. 11-00208, Slip Op. 14-37 (CIT 2014) (*Itochu Bldg. Prod.*) (CIT April 8, 2014) at 12 (“The statutory provision, as discussed above, provides Commerce with discretion in the selection of the effective date for a partial revocation following a changed circumstances review, but that discretion may not be exercised arbitrarily so as to decide the question presented without considering the relevant and competing considerations.”).

<sup>13</sup> See, e.g., *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review*, 68 FR 64079 (November 12, 2003); *Stainless Steel Hollow Products from Sweden: Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation In Part of Antidumping Duty Order*, 60 FR 42529 (August 16, 1995).

<sup>14</sup> See *Steel Wire Garment Hangers From the People’s Republic of China: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order (Steel Hangers)*, 74 FR 50956 (October 2, 2009); *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order in Part: Certain Cased Pencils from the People’s Republic of China (Cased Pencils)*, 71 FR 13352 (March 15, 2006); *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part (Stainless Sheet and Strip)*, 65 FR 77578 (December 12, 2000).

<sup>15</sup> See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order, In Part*, 64 FR 72315 (December 27, 1999).

<sup>16</sup> See *Itochu Bldg. Prod.*, Slip Op. 14-37 at 3.



purposes of the *AD Order*, and the petitioner agreed to Goal Zero's request.<sup>17</sup> Goal Zero claims that there are unliquidated entries corresponding to the 2015-2016 reviews.<sup>18</sup> Goal Zero notes that the final results for the administrative review of the *CVD Order* covering the review period January 1 through December 31, 2015, and the final results for the administrative review of the *AD Order* covering the period December 1, 2015 through November 30, 2016, are being challenged by the petitioner before the Court of International Trade (CIT).<sup>19</sup> However, entries of subject merchandise overlapping with the AD administrative review covering the period December 1, 2015 through November 30, 2016, and which were not liquidated pursuant to automatic liquidation instructions,<sup>20</sup> are either encompassed by Commerce's August 21, 2018 liquidation instructions to CBP or enjoined from liquidation by statutory injunctions entered by the CIT.<sup>21</sup> Similarly, entries of subject merchandise overlapping with the CVD administrative review covering the period January 1, 2015 through December 31, 2015, and which were not liquidated pursuant to automatic liquidation instructions,<sup>22</sup> are enjoined from liquidation by statutory injunctions entered by the CIT.<sup>23</sup> Entries of merchandise enjoined from liquidation by the court may not be subject to Commerce's partial revocation of the order and subsequent

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<sup>17</sup> See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China; Goal Zero LLC's Comments on the Preliminary Results of the Changed Circumstances Review, dated September 4, 2018; see also SolarWorld's submission: "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Comments on Preliminary Results of the Goal Zero LLC Changed Circumstances Reviews", dated September 4, 2018.

<sup>18</sup> See Goal Zero Comments at 11.

<sup>19</sup> *Id.* at 12.

<sup>20</sup> See Message Numbers 7067302 and 7065306.

<sup>21</sup> See Message Number 8233301 instructing CBP to assess an antidumping liability for various exporters of subject merchandise, including ERA Solar Co., Ltd., for the period December 1, 2015 through November 30, 2016. See also Message Number 8269301 instructing CBP with regard to the statutory injunction issued in connection with court number 18-00189 and Message Numbers 8240315 and 8240316 instructing CBP with regard to the statutory injunction issued in connection with court number 18-00176.

<sup>22</sup> See Message Number 7058306.

<sup>23</sup> See Message Numbers 8269331, 8264303, and 8243306 instructing CBP with regard to the statutory injunctions issued in connection with court numbers 18-00184, 18-00185, 18-00186. On August 15, 2018, Commerce instructed CBP to liquidate modules produced in third countries from crystalline silicon photovoltaic cells produced in China. See Message Number 8227315.

instructions to CBP, and because their liquidation is enjoined, they are set to be liquidated in accordance with the final court decision.<sup>24</sup>

We find that legal and administrability issues are presented by using the effective dates suggested by the interested parties. Accordingly, we are exercising our discretion, based on the particular circumstances in these CCRs, to make the effective dates January 1, 2016, for purposes of the *CVD Order* and December 1, 2016, for purposes of the *AD Order*.

#### Instructions to U.S. Customs and Border Protection

Because we determine that there are changed circumstances that warrant the revocation of the *Orders*, in part, we will instruct CBP to liquidate without regard to antidumping and countervailing duties, and to refund any estimated antidumping and countervailing duties on, all unliquidated entries of the merchandise covered by this partial revocation on or after January 1, 2016, for purposes of the *CVD Order*, and on or after December 1, 2016, for purposes of the *AD Order*.

#### Notification to Interested Parties

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and revocation, in part, and notice

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<sup>24</sup> See sections 516A(c)(2) and (e) of the Act.

in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 19 CFR 351.221(c)(3), and 19 CFR 351.222.

Dated: December 13, 2018.

**Christian Marsh,**

*Deputy Assistant Secretary*

*for Enforcement and Compliance.*

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